IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1733 OF 1996

Shri Sanjay Baburao Shinde,)
Adult, Occupation - Nil,)
Residing at "Vijaydeep Society",)
Kulgaon-Badlapur, Taluka-Ulhasnagar,)
District - Thane.)..Petitioner

Versus

1. Ulhasnagar Municipal Corporation)
Ulhasnagar, District - Thane.)

2. The Commissioner,)
Ulhasnagar Municipal Corporation,)
Ulhasnagar,)
District Thane - 421 003.)

3. The Ulhasnagar Municipal School)
Board, Ulhasnagar,)
District Thane - 421 003.)

4. The State of Maharashtra,)
(Through the Secretary,)
Urban Development Department),)
Mantralaya, Bombay - 400 032.)..Respondents

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Shri Rajesh S.Datar for the petitioner.

Shri Rajendra Sawant for respondent Nos.1 and 2.

Respondent No.3 absent, though served.

Shri R.M.Patne, AGP for respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.R.S.DALVI, JJ.

DATED : 17TH MARCH, 2006

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. leave to amend. Amendment to be carried out forthwith. Shri Sawant, the learned advocate, waives service for respondent Nos.1 and 2, and Shri Patne, the learned AGP waives service for the respondent No.4.

2. The petitioner by this petition seeks writ of mandamus for direction to the respondents to employ the petitioner in any suitable post in any department of the respondent No.1 on compassionate ground consequent to the death of his father, which occurred on 5th June, 1992.

3. It is the case of the petitioner that father of the petitioner was a Class-III employee in Ulhasnagar Municipal School Board and he expired on 5th June, 1992, while he was in service with the respondent No.1. The petitioner has born on 26th April, 1968 and was of the age of 24 years at the time of death of his father and has been skilled wireman having completed I.T.I. course at Ambernath. He also holds a heavy vehicle driving licence. The

petitioner, therefore, addressed a letter dated 16th July, 1992 to the Council, as it was then, requesting it to employ him in any suitable post on compassionate ground, consequent to the death of his father while he was in service with the respondent No.1. However, the respondent No.1 did not respond favourably, and therefore, the present petition.

4. The learned advocate for the petitioner, drawing attention to the decision of the Apex Court in the matter of **Commissioner of Public Instructions and Others v. K.R.Vishwanath,** reported in (2005) 7 SCC 206, submitted that though it is not a matter of right to claim employment on compassionate ground, since the petitioner's father expired while he was in service with the respondent No.1, and the responsibility of maintaining the entire family rested upon the petitioner and as the petitioner was without any job and these facts having been brought to the notice of the respondent No.1, it ought to have considered his request for employment on compassionate ground sympathetically, and having failed to do so, the petitioner is compelled to seek necessary order in that regard from this Court.

5. The learned advocate appearing for the

respondent Nos.1 and 2, on the other hand, submitted that the petitioner's father was employed as a Teacher in the school and in the absence of availability of suitable post for the petitioner, the question of employing the petitioner in the service of the respondent No.1 on compassionate ground does not arise.

6. Upon hearing the learned advocate for the parties and on perusal of the records, it cannot be disputed that the employment on compassionate ground cannot be demanded as a matter of right. Such appointments are to be granted taking into consideration the various factors. The Apex Court in **Commissioner of Public Instructions's case (supra)** has clearly ruled, after taking into consideration its earlier three decisions viz. (i) **State of Haryana v. Rani Devi,** reported in AIR 1996 SC 2445, (ii) **LIC of India v. Asha Ramchhandra Ambekar,** reported in (1994) 2 SCC 718, and (iii) **Umesh Kumar Nagpal v. State of Haryana,** reported in (1994) 4 SCC 138, that :-

> "as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not

> another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

7. It is not the case of the petitioner that while denying the opportunity of availing employment with the respondent No.1 on compassionate ground, the respondent No.1 has flouted any specific rule, regulation or administrative instruction in relation to the employment on compassionate ground. It is also not the case of the petitioner that the petitioner had placed before the Council the necessary details to satisfy it about the poor financial condition of the family of the petitioner which could justify employment of the petitioner without following the regular procedure for employment of the candidates in any public service like that of the respondent No.1.

This being the case, there is hardly any scope for the petitioner to make a grievance about refusal on the part of the respondent No.1 to offer any post in its employment on compassionate ground.

8. In the result, therefore, there being no case made out for interference in writ jurisdiction for grant of the relief in the nature asked for, the petition fails and is hereby dismissed. Rule is discharged, with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.R.S.DALVI, J)